REMARKS

Claims 1-26 are currently pending in the patent application.

The Examiner had previously objected to the drawings; but, has now accepted the proposed drawings which were submitted with the amendment filed on April 5, 2004. Since the drawings have been accepted, Applicants submit, herewith, revised paragraphs of the Specification to reference the new drawings. Formal drawings will be submitted upon allowance.

The Examiner has rejected Claims 3-9 and 14-25. The Examiner contends that the claims, specifically Claims 1 and 3 of the system claims and Claims 13 and 15 of the method claims, recite two separate identifications of time-sensitive inventory, but that the specification does not describe the two identifications or identifying components. Applicants respectfully direct the Examiner's attention to the Specification at page 8, lines 15-18, page 13, lines 4-7 and lines 13-21 and page 15, lines 18-23. In the cited passages the Specification expressly teaches that inventory can be identified for SOA treatment either by a user (i.e., an employee of the supplier) working in the

Inventory Control Management System (ICMS or ICM) and entering user inventory identification input at 1014 of the front end user interface component 1004 or by automatic identification by an inventory control component 1018 of the sell off component 1008. Independent Claim 1, as amended, recites a system comprising a front-end user interface for a user to dynamically identify time-sensitive inventory to be offered for selective sale, while the dependent claim, Claim 3, recites means for automatically identifying time-sensitive inventory for sell off. Similarly, the independent method claim, Claim 13, recites "dynamically identifying time-sensitive inventory to be offered for selective sale", which encompasses user input and/or automatic identification of inventory. The dependent claim, Claim 15, specifically recites that the identifying is done automatically. Applicants respectfully assert that the claim language is supported by the Specification and is enabling. Accordingly, Applicants respectfully request withdrawal of the rejections for failure to comply with the enablement requirement.

The Examiner has also rejected Claims 1-12 under 35 USC 112 for indefiniteness, since Claim 1 recites a system having a function, as well as components. Applicants have

amended the language of Claim 1, in accordance with the suggestion of the Examiner, to eliminate the indefiniteness concerns. Accordingly, Applicants respectfully request withdrawal of the rejections under 35 USC 112.

The Examiner next rejects Claims 1-12 as non-statutory subject matter. Applicants have amended the language of Claim 1 and respectfully assert that the claim recites statutory subject matter. Claim 1 recites a computer system having a user interface, a sell off processor and a back end integration processor. The claimed features are not "disembodied software elements" but are components of a computer system. Applicants respectfully request reconsideration of the rejection under 35 USC 101.

With regard to the prior art rejections, including the rejection under 35 USC 102 of Claims 1-9, 13-21 and 26 as anticipated by the Walker '667 patent, the rejection of Claims 1-6, 13-18 and 26 as anticipated or obviated by Walker '620, and the rejection of Claims 10-12 and 22-25 as unpatentable over Walker '620, Applicants note that the Examiner alleges that "it is noted that" the references show the claim features. However, the Examiner has not cited specific passages from the cited art in support of his conclusions. It is respectfully asserted that the Examiner

cannot allege that the references "as a whole" teach the claim features without pointing to specific teachings found in those references. The Examiner has not given the Applicants adequate support for the rejections and has not, therefore, established anticipation or provided a prima facie case of obviousness. Since the Examiner has not provided the Applicants with a sufficient basis on which to argue against anticipation or obviousness, Applicants respectfully request clarification of the rejections. In spite of the insufficiency of the rejections, Applicants nonetheless will attempt to address the rejections below, in the interest of advancing the prosecution of the application.

Claims 1-9, 13-21 and 26 have been rejected under 35 USC 102(e) as anticipated by Walker '667. The Walker `667 patent is directed to a method and system for selling an aging food product as a substitute for an ordered product. When a food product has been assembled, a record is created for the food product, including what the product is and when it was prepared. All relevant food products have predefined time limits for sale which are stored in tables. Based on the time that the food product was created and the predefined time limits for sale, the Walker `667 system

creates a disposal record for the food product which tracks when a food product can be sold and when it must be discarded. Further, the Walker `667 system may offer the food product as a substitute for an ordered food product and may offer the food product at a discount price prior to expiration of the predefined time limit (see: e.g., Col. 5, lines 60-61).

Applicants assert that the Walker '667 patent does not anticipate the invention as claimed. With specific reference to the claim language, the Walker patent does not teach or suggest steps and the means for performing steps of dynamically identifying time-sensitive inventory to be offered for selective sale; offering inventory for selective sale; handling communications with prospective buyers; and automatically integrating the results of the selective sale. As argued previously, the Walker '667 patent does not teach or suggest dynamically identifying time-sensitive inventory to be offered for selective sale. Under Walker, when a food product is prepared, a human operator inputs the time and product type, so that the system can pull up the appropriate predefined time limits and create entries for the disposal table. While the Walker `667 system can track the times for the food product based on the created disposal table, such

is not the same as nor suggestive of dynamically identifying time-sensitive inventory for sell off. Walker `667 does not identify the inventory item as time-sensitive, such is preprogrammed into the Walker '667 system based on its predefined tables and human-input information. Further, Walker is not dynamically identifying the inventory, it is simply monitoring a disposal record and offering the item to any potential buyer prior to the discard date.

With respect to the claim step of offering inventory for selective sale, Applicants again note that Walker '667 will offer inventory which is close to the discard date to any prospective buyer. Walker does not teach generating offers to selected buyers and handling communications with those selected prospective buyers. Walker simply substitutes the date sensitive food in any orders received or offers the date sensitive food at a discounted price. Walker does not offer or conduct a selective sale.

Finally, Applicants respectfully assert that the Walker `667 patent does not teach or suggest automatically integrating the results of selective sales into the yield and revenue management systems at the supplier site. The present invention integrates the results of any sell off of time-sensitive inventory with existing, "legacy" management

systems. As detailed, for example, on page 10 of the present application, such components as accounting software, forecasting software, inventory tracking software, sales tracking software, production software, and respective databases are automatically provided with sell off results. All of the pending claims expressly recite the integrating function. There is nothing in the teachings of Walker '667 patent which anticipates or obviates the integrating component/function. Applicants disagree with the Examiner's conclusion that "[since] the system of '667 as a whole resides at the suppliers site...results are integrated into the management systems at that site." Walker '667 does not teach integration of sales results into existing management systems at the supplier site; therefore, it cannot simply be presumed that such occurs. An anticipation rejection requires that the references expressly teach the claim feature or that an alleged inherency necessarily follows from the teachings of the prior art *(The Toro Co. v. Deere & Co.*, 355 F. 3d 1313, 1320 (Fed. Cir. 2004)). Since integration into yield and revenue management systems at the supplier site is not taught by Walker '667 and does not necessarily flow from the teachings, it cannot be maintained that Walker '667 teaches that claim features.

It is well established under U. S. Patent Law that, for a reference to anticipate claim language under 35 USC 102, that reference must teach each and every claim feature. Since the Walker '667 patent does not teach the dynamic identifying steps or component, the sell off steps and means for offering inventory for selective sale and for handling the communications, or the steps and means for integrating the results of the selective sale as claimed, it cannot be maintained that the Walker '667 patent anticipates the invention as claimed. Since the Walker '667 patent does not anticipate the language of the independent claims, Claims 1, 13 and 26, it cannot be concluded that it anticipates the language of the claims which depend therefrom and add limitations thereto. Accordingly, Applicants respectfully assert that the Walker '667 patent does not anticipate the language of Claims 2-9 and 14-21.

Claims 1-6, 13-18 and 26 have been rejected as either anticipated or unpatentable over the Walker '620 patent, and Claims 10-12 and 22-25 have rejected as unpatentable over the Walker '620 patent. The Walker '620 patent is directed to an early priceline.com model of reverse auctioning of goods and services, wherein a consumer selects a "special fare listing" with flight departure and destination

information and a specified time range for travel, along with a monetary amount comprising a "bid" for an airline ticket which meets the location and time criteria, and that information is communicated to a reservation manager. The bidding process is handled by a reservation manager which is not at the supplier site. Variables in the process include the identity of the airline carrier (i.e., the supplier) and the departure time (generally including both day and time). In an alternative embodiment, the variables may additionally include the bid price. Upon receipt of a "bid", the reservation manager queries the airline, or a database comprising a plurality of flight and special fare listings, to determine a flight on which to place the consumer at the special fare/bid price. Clearly the Walker '620 patent is not teaching or suggesting a supplier site system and method. Moreover, the Walker '620 patent does not teach or suggest the system and steps as claimed.

Walker '620 does not provide a supplier site step and means for dynamically identifying time sensitive inventory for sell off. What Walker '620 teaches is a remote, non-supplier hosted site which receives input from suppliers in response to queries. Clearly Walker '620 is not teaching

or suggesting supplier site dynamic identification of inventory for selective sale.

With respect to the means and steps for offering inventory for selective sale, the Walker '620 hosted site does not offer selective sale, and clearly does not do so from a supplier site. The hosted site, as discussed in the Specification of the present application, is not hosted by the supplier of the inventory, does not offer only the inventory of a single particular supplier, does not offer a selective sale (i.e., only to selected prospective buyers), and does not conduct communications with selected prospective buyers using the supplier's existing communications systems (i.e., e-mail lists and/or supplier web site). Clearly, therefore, it cannot be maintained that the Walker '620 patent anticipates or obviates the invention as claimed.

Finally, there is nothing in the Walker '620 patent which teaches or suggests the claim feature of automatically integrating the results of a selective sale into the management systems at the supplier site. Walker '620 makes no mention of automatically updating supplier records/systems.

Applicants again note that the rejections do not cite specific passages of the Walker '620 patent which allegedly render the claim language unpatentable. Moreover, the Examiner relies on such arguments as "...it is notoriously old and well known in the art to provide" communications and advertising (page 7, lines 5-6 and page 7, line 21-page 8, line 2). Applicants respectfully assert however that, since the Examiner has not provided any citations which would teach or suggest the claim features or teach or suggest modifying the Walker '620 patent in such a way as to render the claim features obvious, the Examiner has not made out a *prima facie* case of obviousness against the claims *(In re Wilson*, 424 F. 2d 1382, 1385, 165 U.S.P.Q 494, 496 (C.C.P.A. 1970)). Absent some teaching or suggestion of dynamically identifying inventory at a supplier site, generating an offer for the identified inventory and using supplier site existing communications systems for selective sale or of advertising to selected prospective buyers, and integrating the results into the supplier management systems, the alleged obviousness cannot be sustained, particularly since the Walker '620 patent expressly teaches that the hosted site is not a supplier site. Applicants respectfully assert

that neither the anticipation nor the obviousness rejections based on the Walker '620 patent can be sustained.

Based on the foregoing amendments and remarks, Applicants respectfully request entry of the amendments, reconsideration of the amended claim language in light of the remarks, withdrawal of the rejections, and allowance of the claims.

Respectfully submitted,

W. J. Andres, et al

By: Anne Vachon Dougherty

Anne Vachon Dougherty
Registration No. 30,374
Tel. (914) 962-5910